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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,247	02/07/2005	Rein Tammik	9300100-2001- -	9091
7590 Ronald R Santucci Frommer Lawrence & Haug 745 Fifth Avenue New York, NY 10151			EXAMINER MERCIER, MELISSA S	
			ART UNIT 1615	PAPER NUMBER
			MAIL DATE 07/07/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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JUL 07 2008

In re Application of:  
Tammik, Rein  
Serial No.: 10/507,247  
Filed: February 7, 2005  
Attorney Docket No.: 9300100-2001

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: PETITION DECISION  
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This is in response to the petition presumably filed under 37 CFR § 1.182 on June, 10, 2008. In this petition, applicant requests withdrawal of the Notice of Appeal filed on March 10, 2008.

BACKGROUND

More recently, applicant filed a Notice of Appeal after a final Office action (the 'original' Notice of Appeal) with the appropriate fees on March 10, 2008. The Notice of Appeal was accompanied by a 'Reasons for Pre-Appeal Brief Request for Review' (first page following PTO/SB/31 page); however, the original Notice of Appeal was not accompanied by an appropriate Pre-Appeal Brief Review Request form: Form PTO/SB/33.

On June 10, 2008, applicant filed a second Notice of Appeal with the appropriate fees and concurrently filed the appropriate form for filing a Pre-Appeal Brief Review Request Form PTO/SB/33, as well as Reasons for Pre-Appeal Brief Request for Review.

On June 10, 2008, applicant additionally filed this petition, presumably under 37 CFR § 1.182 requesting the withdrawal of the original Notice of Appeal filed on March 10, 2008.

In this petition, applicant asserts that it was his intention to file Pre-Appeal Brief Review Request with a Pre-Appeal Brief Review Request Form PTO/SB/33 concurrently with the original Notice of Appeal filed on March 10, 2008; however, inadvertently omitted the PTO/SP/33 form. In support thereof, applicant points to the Reasons for Pre-Appeal Brief Request for Review filed concurrently with the original Notice of Appeal filed on March 10, 2008. Applicant seeks the withdrawal of the original Notice of Appeal in order for the Office to recognize the second Notice of Appeal filed on June 10, 2008 which was accompanied by an appropriate Appeal Brief Review Request form PTO/SB/33 in order to enable Applicants to conduct a Pre-Appeal Brief Review with the appropriate parties prior to filing an Appeal Brief.

The United States Patent and Trademark Office Official Gazette (OG) Notice of July 12, 2005, indicates that a Request for a Pre-Appeal Brief Review is to be filed by appropriate use of a

PTO/SB/33 Pre-Appeal Brief Review form. Additionally, the OG notice indicates that the Request for a Pre-Appeal Brief Review is to be filed concomitantly with a Notice of Appeal.

It is herein decided that Applicant's filing of Reasons for requesting a Pre-Appeal Brief Review concurrently with the original Notice of Appeal was a *Bona Fide* attempt to schedule a Pre-Appeal Brief Review; albeit an inappropriate attempt due to lacking the correct Pre-Appeal Brief Review form PTO/SB/33. Thus, Applicant's arguments presented in the petition are convincing that it was their intent to file an appropriate Pre-Appeal Brief Review form at the time the original Notice of Appeal was filed. Hence, Applicant's request to withdraw the original Notice of Appeal filed March 10, 2008 is hereby granted.

## DECISION

The petition is **GRANTED**.

The original Notice of Appeal filed in this case on March 10, 2007 is hereby withdrawn and consequently rendered null and void. The Office acknowledges the timely filing of a Notice of Appeal on June 10, 2008 accompanied by an appropriate request by applicant for a Pre-Appeal Brief Review. This application will be forwarded to the examiner to schedule a Pre-Appeal Brief Review as requested by Applicant.

The \$200.00 petition fee as required in 37 CFR 1.17(g) will be charged to Applicant's account No. 50-0320 as authorized.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 703-872-9306.



Marianne C. Seidel  
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Technology Center 1600